

SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

SUSSEX COUNTY COURTHOUSE
1 The Circle, Suite 2
GEORGETOWN, DE 19947

May 26, 2010

Donnie Ray Hawkins
SBI No. 0009
Sussex Correctional Institute
P.O. Box 500
Georgetown, DE 19947

RE: State of Delaware v. Donnie R. Hawkins
Def. ID No. 0411002216A
Letter Opinion - Motion for Postconviction Relief

Date Submitted: May 26, 2010

Dear Mr. Hawkins:

This is my decision on your Motion for Postconviction Relief. A jury found you guilty of Possession of a Deadly Weapon During the Commission of a Felony (two counts), Aggravated Menacing (two counts), Assault in the Third Degree, Unlawful Imprisonment in the Second Degree (two counts), Endangering the Welfare of a Child, Offensive Touching (two counts), Disorderly Conduct, Driving a Vehicle with a Prohibited Alcohol Content, and Driving after Judgment Prohibited. I sentenced you to serve a total of 44 years and 60 days at Supervision Level V on June 7, 2005. Your sentence required you to serve 10 years on each of the two charges of Possession of a Deadly Weapon During the Commission of a Felony. The Sentence Order incorrectly stated that the first three years of your sentence on each of these charges was a mandatory period of incarceration.

The Department of Correction caught the error and told me about it on August 26, 2009. My secretary sent a letter, dated August 28, 2009, to you, the Deputy Attorney General who prosecuted your case, Melanie C. Withers, Esquire, and your attorney, Carole J. Dunn, Esquire, informing you and the attorneys of the error. The letter stated further that a Review of Sentence Hearing would be held on September 4, 2009. The Review of Sentence Hearing was held as scheduled and I modified your sentence by removing the incorrect language. I sent the Modified Sentence Order to you and the attorneys on the same day. You sent me a letter, dated September 18, 2009, asking for an explanation of the Modified Sentence Order. I sent you a letter, dated September 22, 2009, explaining what I had done. Ms. Dunn sent me a letter, dated February 24, 2010, asking for a "Re-sentencing Hearing" to explain the Modified Sentence Order. I granted her request and scheduled a Review of Sentence for March 12, 2010. You, Ms. Dunn, and Ms. Withers appeared on that day and I explained to you that I had corrected your sentence by removing the incorrect language from the two weapon offenses. I did not do anything else and I did not issue another Modified Sentence Order.

You now allege that Ms. Dunn did not represent you effectively at the "Re-Sentencing Hearing" on March 12, 2010 because (1) she failed to argue for a more lenient sentence, and (2) had a conflict of interest in representing you because you had pending claims of ineffectiveness of counsel against her in Federal Court. You have failed to understand what happened on March 12, 2010. I brought you in on that day for the sole purpose of explaining to you why I had corrected your sentence, which is what I did. The following is in excerpt of what I told you on March 12, 2010:

The Court: When I sentenced Mr. Hawkins, I made a

mistake on one of the charges. I think it was the weapon's charge I put in there it was a mandatory three-year period of incarceration, which was incorrect. I took that off. That's all.

Ms. Dunn: That's correct, your Honor. That left the ten years that the Court sentenced him to on two of these same charges. And as I discussed with Mr. Hawkins before sentencing and now since, whatever time he was given under that statute, the sentence at Level 5 must be served, the Level 5. That's the way the statute reads. It also disallows any good time application on that sentence. I believe Mr. Hawkins was under the impression at some point he was to serve only three years of that ten years. And he can ask the Court or address the Court on that issue. But if it's at all appropriate, I would, on behalf of my client, ask the Court to consider reducing that ten years, that 20 years mandatory time.

The Court: I just brought Mr. Hawkins in to explain to him what I had done, which I thought was quicker than exchanging letters back and forth. I made a mistake not on the ten years, but on the mandatory portion, which is irrelevant. It doesn't change anything.

There was no re-sentencing and, therefore, no opportunity for Ms. Dunn to argue for leniency on your behalf. Your allegations are wholly without merit.

Your Motion for Postconviction Relief is DENIED.

IT IS SO ORDERED.

Very truly yours,

E. Scott Bradley

cc: Prothonotary's Office
Melanie C. Withers, Esquire
Carole J. Dunn, Esquire